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**LOTTERIES: THE BID FOR
EXCLUSIVE JURISDICTION IN CANADA**



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LOTTERIES: THE BID FOR
EXCLUSIVE JURISDICTION IN CANADA

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INTRODUCTION

Since 1985, the Ontario Lottery Corporation has enjoyed a monopoly over the revenues generated from the operation of provincial lottery games. The Corporation owes its position to two events, namely, the enactment of the 1985 amendments to the Criminal Code which gave the provinces exclusive jurisdiction over lotteries in Canada and the creation of the Ontario Trillium Foundation, a non-profit organization which receives lottery proceeds for distribution to the various religious and charitable organizations in Ontario. In order to appreciate the significance of these events, it is necessary to examine them in relation to their historical background. It is this background which forms the subject matter of the paper which follows.

THE JURISDICTIONAL ISSUE (1856-1985)

Lotteries have existed in Canada for more than 300 years. The first major attempt at regulating this activity was made by the Government of Canada with the introduction of the Act Respecting Lotteries¹ in 1856. Proclaimed in force on January 1, 1857, this legislation imposed a prohibition against all lottery activity in Canada, both foreign and domestic. Unhappy at the loss of a significant source of their revenue, the clergy petitioned the government to relax these restrictions. Although they were successful in obtaining an amendment to the Act in 1860, this amendment was extremely limited in nature, only providing an exception to the law in the case of "raffles of objects of little value and bazaars held for the purposes of charity."² As a result, it proved to be of little value to the clergy.

The Catholic Church in Lower Canada continued to express its dissatisfaction with the law up until Confederation, to no avail. At that time, they took their concerns to the newly created Parliament of Quebec. Yielding to clergy demands, the Quebec Legislature passed legislation in 1869 "... concerning bazaars and lotteries ... insofar as these laws affect our province"³ which in effect amended the federal statutes.

The amendment, although continuing the prohibition with respect to foreign lotteries, widened the scope of the 1860 legislation by authorizing the holding of local lotteries and bazaars provided that their purpose was to:

assist in the construction or support or payment of debts of a church or other religious building, of a hospital, shelter or other charitable institution, or an educational establishment or settlement company . . . without restriction as to the mandate.⁴

In addition, the law stipulated that "the prizes or things drawn for or offered in lotteries cannot consist of sums of money, notes, bank-notes, obligations, debentures or other negotiable effects of this kind."⁵

As a result of this amendment, religious lotteries flourished in Quebec during the next 20 years. Ontario and the rest of the provinces, however, chose to adhere to the law of 1860 with the result being a minimal amount of lottery activity carried on in those provinces. The federal government, concerned about this proliferation of lotteries in Quebec as well as its contradictory legislation, passed a law in 1892 with respect to "the maintenance of peace, order and good government in Canada." The legislation contained provisions which banned all lotteries in Canada as being "contrary to order and the public interest."⁶ Soon after the law was enacted, proceedings were commenced in the courts to challenge its constitutionality. In a decision rendered on June 1, 1892, Judge Dugas ruled that:

the conclusion to which I have come makes it unnecessary to consider whether or not the lottery as such is a civil offence and thus not in the category of criminal acts so-called. In the same way, on the question as it is posed I can also not enter on consideration that might incidentally be raised in favour of a lottery set up by virtue of the local act. I purely and simply declare that in my opinion the federal parliament had the right implicitly to consider that lotteries in general are against order and the public interest and that as a result Chapter 15 is constitutional.⁷

In spite of this favourable decision, the federal government undertook steps to further entrench its authority in the field by including lottery provisions in Canada's first Criminal Code.⁸ Although the sections were basically an incorporation of the existing law of 1860 and its amendments, they were significant in that they ended the confusion surrounding the status of lotteries in Canada. It was now clear that subject to minimal exceptions, lotteries were prohibited in all provinces including Quebec.

Finding this law to be too restrictive, charitable organizations in Canada lost interest in conducting lotteries, opting instead to find alternative methods for raising funds. As a result, very few legal lotteries were operated in Canada after 1892. It was not until the 1930s that the public again began to pressure the federal government to legalize lotteries. Encouraged by the success of the Irish Sweepstakes which had been in operation since 1930, many Canadians began to see a national lottery as offering a partial solution to the financial problems caused by the Great Depression. Several lottery bills were drafted and introduced federally during the 1930s but they were all quickly shelved.

In spite of these unsuccessful attempts at amending the Criminal Code, lotteries began to reappear and proliferate during this period. With public opinion clearly in favour of their legalization, the authorities began to adopt a more tolerant attitude with respect to the enforcement of the lottery provisions of the Criminal Code. Although it was well recognized that many of the lotteries conducted by charitable and religious organizations during this period were illegal, violations were generally overlooked since the profits were to be used for worthwhile purposes. Those who played the Irish Sweepstakes lottery also escaped prosecution during these times.

Although the public was fairly strong in voicing its opinions regarding lotteries, the federal government remained steadfast, refusing to alter its position on this issue. It was not until 1969 that the government finally succumbed to pressure and liberalized the restrictions. In that year, the Criminal Law Amendment Act was passed amending the lottery provisions in Part V of the Code.⁹ The new legislation provided exceptions to the general prohibition and authorized lotteries to be conducted by:

- the federal government in accordance with regulations made by the Governor in Council;
- the government of a province either alone or in conjunction with the government of another province in accordance with any law enacted by the legislature of that province. A provincial lottery, however, could not be extended into another province without the prior consent of the government of that province;
- charitable and religious organizations under the authority of a provincial licence;
- operators of agricultural fairs or exhibitions under the authority of a provincial licence;
- operators of amusement parks under the authority of a provincial licence.¹⁰

The main purposes of these amendments were namely:

- to legalize lotteries which were already in existence in Canada,
- to prevent the outflow of money from Canada into those countries operating lotteries,
- to provide additional revenue for Canada,
- to transfer jurisdiction over lotteries to the provinces with the federal government reserving the authority to establish a national lottery.

In spite of the 1969 amendments, Ontario chose not to take advantage of its newly granted authority for another six years. Quebec, however, immediately seized the opportunity and introduced Canada's first provincial lottery. Legislation was proclaimed in effect on January 1, 1970, establishing Loto-Québec as the corporation authorized to operate lotteries in the province.¹¹ Almost immediately thereafter, an order in council was issued, permitting Loto Québec to establish its first legal lottery. Marketed under the name of Inter Loto, the new game was launched in February of 1970, with its first draw held on March 14. Shortly after this time, two new lotteries were established, the Mini Loto and the Super Loto. A fourth entry into the Quebec market was Loto Perfecta, a lottery based on the outcome of horse racing events, introduced in 1972.

During this period of initial operation, Loto-Québec proved to be a highly successful corporation. In 1973, however, it lost its market monopoly and began to experience a reduction in its profits. The new competitor in the field was the Olympic Lottery. The City of Montreal, having won the bid to entertain the 1976 Olympics, was looking for sources of revenue to self-finance the games. It was proposed that these sources include not only the sale of commemorative coins and stamps to the public but also the establishment of a national lottery.

The Organizing Committee of the Olympic Games (COJO) approached the federal government seeking approval to organize and operate this lottery. Permission was granted on the condition that COJO assume complete responsibility for its operation and that there be no involvement on the part of the federal government. This position was adopted mainly as a result of an understanding reached between the federal government and the provinces at the time of the 1969 amendments to the Criminal Code. Essentially, the federal government undertook to remain out of the lottery business, leaving the field exclusively to the provinces.

On July 27, 1973, the Olympic Lottery Act (1976) received Royal Assent.¹² Because COJO was a private corporation lacking the authority to operate any lottery, Part V of the Criminal Code had to be temporarily amended. The legislation authorized COJO to conduct a lottery in any province upon obtaining the consent of the Lieutenant Governor in Council in that province.¹³ This consent was, however, not forthcoming. There was a reluctance on the part of Ontario and the rest of the provinces to participate in the lottery since 95 percent of the profits were to be used to finance the 1976 Montreal Olympics, with only the remaining five percent payable to the participating provinces to support the development of amateur sport. Notwithstanding their concerns, six provinces and one territory did agree to participate: Ontario, Alberta, New Brunswick, Newfoundland, Prince Edward Island, Quebec and the Northwest Territories. The remaining provinces opted to join later.

On August 3, 1973, COJO established the Olympic Lottery Corporation, a federally-incorporated company with a mandate to act as COJO's agent in operating the lottery. The lottery was quickly organized and its first draw was held on December 22, 1973. During its three years in operation, it proved to be a major financial success generating a total profit of \$235 million, ten times the projected revenue.

Up until the mid 1970s, most of the provinces, including Ontario, limited their involvement in the lottery business to the issuing of licenses for the operation of private charitable lotteries. With the immense success of the Olympic Lottery, however, they began to change their attitude. Disgruntled at their five percent share of the profits from the Olympic Lottery and anxious to generate their own sources of revenue, many provinces proceeded to establish lottery schemes of their own. In 1974, Manitoba, Alberta, Saskatchewan, British Columbia and the Yukon formed the Western Canada Lottery Foundation and introduced "The Western" lottery.

In the following year, Ontario entered the field. In 1975, legislation was passed that established the Ontario Lottery Corporation as a crown corporation with a mandate "to develop, undertake, organize, conduct and manage lottery schemes" on behalf of the government of Ontario and in conjunction with the federal government and other provincial governments.¹⁴ Proceeds from the lotteries were to be used to finance culture, recreation and sports in the province.

According to Hansard, the following rationale was used as support for the creation of the provincially run lottery in Ontario:

- as a result of the success of the Olympic lottery, Ontarians now viewed lotteries as a publicly acceptable form of gambling.
- lotteries would become effective revenue-producing sources for the Ontario government. A provincially run lottery would ensure that the money currently flowing into the Olympic treasury would remain in Ontario for the benefit of the province.¹⁵
- proceeds from the lotteries could be used to fund non-essential services in the province - specifically, physical fitness, sports, recreational and cultural activities and facilities. It was believed that tying the proceeds to culture, sport and recreation would "legitimize lotteries in the eyes of certain people within the province who otherwise might not approve."¹⁶ In addition, it was determined that "essential services should properly be funded through taxation and that lotteries should not be viewed as a form of substitute taxation."¹⁷

The first lottery introduced by the Corporation was in Ontario in 1975. It was such a success that the Ontario government began to depend upon it as a source of revenue for cultural, sports and recreational activities. As a result, it was prepared to take all steps necessary to preserve its exclusive control over lotteries in the province.

The first major threat to Ontario's jurisdiction was posed by the federal government with its takeover of the Olympic Lottery. Initially, this lottery was given a lifespan of three years, with its last draw to be held in July 1976. However, due to the significant deficit incurred by the Olympics, an attempt was made on the part of the Quebec government to extend its operations past 1976 in order to generate funds to reduce the debt. The Quebec government was unable to obtain sufficient support from the provinces in order to maintain the lottery and as a result the federal government seized the opportunity and entered the field.

Using its authority under Part V of the Criminal Code, it created a national lottery. In reality, this lottery was not a new venture; the federal government simply assumed control over the existing Olympic Lottery and continued its operations after the expiry of its original mandate. A crown corporation known as Loto Canada Inc. was incorporated under the Canada Business Corporations Act to manage the scheme and the lottery was renamed Loto Canada.

Although the provisions of the Criminal Code required the provincial governments to enact legislation when entering the lottery field, no similar obligation was imposed on the federal government. As a result, the federal government opted to organize the lottery scheme by way of regulations and supplementary estimates.¹⁸ Funded by a loan of \$5 million, the lottery

began operating in the fall of 1976 following the final draw of the Olympic Lottery.

Originally there was debate as to whether Loto Canada should be established as a permanent or a temporary national lottery. However, due to concerns regarding the method of the lottery's establishment (i.e., by supplementary estimates) and the lack of clear operational guidelines, it was agreed that Loto Canada would be given a three year mandate. Furthermore, it was stipulated that no additional draws could be held after December 1979 unless an amendment to the regulations was passed.¹⁹

In accordance with the supplementary estimates, proceeds from Loto Canada were to be distributed in the following manner:

- 82.5 percent to offset the 1976 Olympic Games deficit and to assist in the financing of the 1978 Commonwealth Games,
- 12.5 percent to the government of each province in proportion to the number of tickets sold by Loto Canada Inc. in each province,
- 5 percent for physical fitness, amateur sports and recreation programs.²⁰

Although the provinces were to be given a pro rata share of the proceeds generated from Loto Canada, there was considerable resentment regarding the federal government's entry into the lottery business, a field over which the provinces claimed sole jurisdiction. The federal government, however, disputed this claim. The Honourable Jean Chrétien representing the federal viewpoint made the following statement when appearing before the Standing Committee on National Finance:

Some may argue that lotteries are a provincial field, but this is not so. The federal government has the authority to amend the Criminal Code, and we have done so. We said at the time that if the provinces wanted to establish lotteries they could go ahead, and most of them have done that. But at no time have we said that we were turning that field over completely to the provinces. We have told them that they could use it, but in fact it still remained very much under our control.²¹

Ontario was particularly angered by the federal government's attitude and began to organize the rest of the provinces in an effort to provide stiff competition for the federal lottery. In conjunction with Manitoba, Saskatchewan and Alberta, Ontario established the Interprovincial Lottery Corporation and introduced "The Provincial" lottery on to the market. The Corporation

was created essentially as a holding company to be run by a board consisting of representatives from each participating lottery corporation. Each corporation was given the responsibility for administering the game in its own province. Tickets would be purchased from the Interprovincial Lottery Corporation and marketed in the individual provinces. The proceeds from the sale of these tickets were to remain in the provinces.

In addition to the Interprovincial Lottery, two other initiatives were undertaken at the provincial level in 1976. On the east coast the provinces of Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island united to form the Atlantic Lottery Corporation. Its first game, the A-1, was launched on December 15, 1976. The Western Canada Foundation also introduced a new game into the market, the Western Express.

These provincial initiatives did not lessen the federal government's determination to remain in the lottery business. A proposal was quickly developed to establish a new national lotto game in order to combat the provincial threat. Ontario retaliated by joining with Quebec to institute a computerized system for lotto games. In 1978, when this computerized system was established, Ontario launched Lottario and Quebec introduced Loto 6/36. At this point, the federal government retreated and entered into an agreement with the provinces to abandon its lotto project in return for exclusive market control over lotteries with tickets priced at \$10 or more.²² It was soon to be discovered, however, that the federal government had seriously miscalculated the appeal of the premium priced tickets. As a result, the 1978 agreement put Loto Canada at a longterm financial risk.²³

In the following years the provinces continued to introduce new products in an attempt to entrench themselves securely in the lottery field. In 1978 Loto-Québec launched two instant games and then together with the Atlantic Lottery Corporation joined the Ontario-Western Alliance in the Interprovincial Lottery Corporation. At this point the provinces had formed virtually a united front with the common goal of forcing the federal government out of the lottery business.

In 1979, with Loto Canada's mandate about to expire, the federal government introduced a bill to prolong its life indefinitely.²⁴ The legislation's successful progress, however, was interrupted by an election and a change in the government. Instead of continuing the efforts of the previous government to further entrench itself in the field, the new government, feeling bound by an election campaign promise, took steps to withdraw permanently from the lottery business. An agreement to this end was struck with the provinces in 1979. In

return for relinquishing to the provinces its jurisdiction over lotteries, the federal government was to receive \$24 million indexed annually.²⁵ Shortly after this agreement was signed, the Interprovincial Lottery Corporation introduced Super Loto, an exact replica of the recently demised Loto Canada game.

Although the provinces now considered their differences with the federal government to be settled and their jurisdiction unfettered, this situation was shortlived. In 1980, a federal election brought in a new government with a new attitude. Before long it was beginning to seek opportunities to re-enter the lottery business. Instead of relinquishing the \$7 million remaining in Loto Canada's account from unclaimed or unpaid prizes, the federal government used the money to fund research into the establishment of a sports pool lottery. However, it did not act quickly enough.

Loto-Québec obtained the competitive edge by entering the market first with its Hockey-Select game launched in 1982. The federal government decided to challenge this action and applied to the courts to obtain an injunction against Hockey-Select. The basis of the federal government's argument was that the game was not a true lottery, because it involved betting on the outcome of a sporting event and thereby contravened Part V of the Criminal Code. The case reached the Appeal Court where a decision was rendered in favour of the provinces. It was held that "the government of a province has the authority to conduct and administer a lottery scheme in the province ... including games of chance or mixed chance and skill." Hockey-Select was determined to be a game of mixed chance and skill thereby qualifying as a lottery scheme.²⁶

Although unsuccessful in its attempt to force the demise of Hockey-Select, the federal government decided to proceed with its plan to launch its own sports pool lottery. To this end, it introduced "Bill C-95, The Athletic Contests and Events Pool Act" into the House in 1982.²⁷ Its purpose was to amend the Criminal Code to provide the federal government with exclusive jurisdiction to operate pool systems of betting on combinations of athletic contests and events. Proclaimed in force in 1983, the Act amended Part V of the Criminal Code providing that:

notwithstanding any provision of this Part relating to gaming or betting, it is lawful

- (a) for the Government of Canada to operate and manage a pool system of betting

- (b) where the Government of Canada and the governments of any one or more provinces have entered into an agreement or agreements jointly to operate and manage a pool system of betting, for the Government of Canada and the governments of any one or more such provinces jointly to operate and manage a pool system of betting

on a combination of two or more athletic contests or events.²⁸

The term "pool system" was defined as a "pool system of betting on any combination of two or more professional athletic contests or events."²⁹ Authorized pool systems were restricted to any combination of two or more professional sports events in order to minimize the risk of rigging the outcome of these events.

The Canadian Sports Pool Corporation was established by the legislation to:

- (a) to organize, operate and manage pool systems;
- (b) to conduct and manage, in accordance with regulations made by the Governor in Council such lawful gaming activities as the Governor in Council directs.³⁰

Profits of the Corporation were to be paid out of the Consolidated Revenue Fund to support arts and culture, fitness and amateur sport, medical and health research and the 1988 Calgary Winter Olympic Games.³¹

Although the government tried to argue that the purpose of the Bill was to provide funds for the Calgary Olympic Games, it was generally recognized during the debates that "the Government wanted to get back into the gaming business and it was using the Calgary Olympics as the vehicle by which to do so."³² This conclusion was essentially based on a reading of s. 14(1)(b) of the legislation. Referred to as the "mack truck clause", the section authorized the federal government to conduct any lottery activities it deemed lawful through order in council.

When the Bill was introduced, there was considerable debate as to its legality in light of the 1979 federal-provincial agreement which gave the provinces exclusive jurisdiction in the field of lotteries. The government argued that the Bill was legal based on the contention that a sports pool was not a lottery as it involved an element of skill as opposed to chance. This opinion was questioned by the provinces, given the recent decision in the Hockey-Select case.

Viewing the federal government's action as a violation of its 1979 agreement, Ontario joined with the rest of the provinces and initiated the following retaliatory measures:

- The Interprovincial Lottery Corporation prohibited its retailers from selling federal lottery tickets;
- A court action was commenced for breach of the 1979 federal/provincial agreement;
- A campaign was mounted to obtain public support for the provincial cause (the provinces also received support from the National and American baseball leagues who were upset at the Canadian Sports Pool Corporation's unauthorized use of their ball club names);
- Loto-Québec applied to the courts for an injunction against the Sports Pool Corporation alleging trademark infringement.

Gradually, the arguments raised by the provinces won acceptance in Ottawa. In 1984, the federal government began to seriously consider the possibility of relinquishing its control over lotteries to the provinces. The effects of this change in attitude were quickly felt by the Sports Pool Corporation. Lottery ticket sales were discontinued at the end of the baseball season in 1984 and although the Corporation continued to exist until 1985, it had virtually ceased operations. As a result, the Corporation incurred significant financial losses from September 1984 until June 1985, approximately \$1.5 million per week. On June 12, 1985, the federal government entered into what was to be its final agreement with the provinces. Under the terms of the agreement, the federal government promised to:

- Introduce amendments to Part V of the Criminal Code removing the provisions which authorized the federal government to conduct lotteries and sports pool betting;
- Refrain from re-entering the field of gaming and betting and to ensure that the rights of the provinces in that area were not reduced or restricted;
- Introduce amendments to Part V of the Criminal Code to clarify the legal status of the Lotto 6/49 game;
- Use its best efforts to wind up the Sports Pool Corporation and Loto Canada Inc. (By some oversight, Loto Canada Inc. had not been wound up).

In return, the provinces agreed to pay \$100 million to the federal government over a three year period to help fund the 1988 Calgary Olympic Games and to continue to pay the federal government the \$24 million indexed annually pursuant to the 1979 agreement.³³ The Criminal Code was so amended in 1985, thereby providing Ontario and the rest of the provinces with exclusive jurisdiction over lotteries in Canada.³⁴ (The relevant section of the Code is reproduced in Appendix B.)

The federal government was not the only source of competition experienced by the Ontario Lottery Corporation during the early 1980s. A secondary threat came from the local level.

In addition to legalizing lotteries conducted by the federal and provincial governments, the 1969 amendments to the Criminal Code permitted charitable and religious gaming.³⁵ The provinces were given the responsibility of issuing licenses for such activities. In Ontario, the responsibility for charitable gaming rests with the Entertainment Standards Branch of the Ministry of Consumer and Commercial Relations which has, in turn, delegated much of its licensing authority to the municipalities.

The charitable organizations normally operate their lotteries at a local or regional level. Activities include raffles, bingos, break-open tickets and Monte Carlo events. In the early 1980s however, several charities were granted licenses for the operation of two province-wide lotteries, namely, Cash for Life (operated by a coalition of provincial charities until 1982) and Pot O' Gold (operated by the Roman Catholic diocese of Sault Ste Marie from 1981-1984). These lotteries were extremely successful, generating considerable revenue for their sponsoring charitable organizations.

Although their success benefited the charitable organizations, it proved to be problematic for the Ontario Lottery Corporation. The lotteries were viewed as an unwelcomed source of competition, a situation that was quickly addressed. In 1982, the Ministry of Consumer and Commercial Relations agreed to cease licensing province-wide charitable lotteries. In order to ensure that the charitable organizations would not be adversely affected by this action, the Ontario Lottery Corporation agreed to make available \$15 million annually from its Interprovincial Lottery Corporation profits to be used to provide funds for the various charitable organizations in Ontario. A granting body called the Trillium Foundation was established in order to receive and distribute this money.

With the creation of the Trillium Foundation and the enactment of the 1985 amendments to the Criminal Code, control over lottery revenues in Ontario (and in the rest of the provinces) has ceased to be an issue for debate. Finally it has been settled that exclusive jurisdiction over lotteries in this province rests with the Ontario government. This being the case, the Ontario Lottery Corporation now possesses a total monopoly over provincial lottery games in Ontario.

FOOTNOTES

¹C.S.C. 1859, c. 95.

²M. Labrosse, The Lottery From Jacques Cartier's Day to Modern Times ([Montreal]: Starke, 1985), p. 82. (This book served as a major source of information for this paper.)

³*Ibid.*, p. 83.

⁴*Ibid.*

⁵*Ibid.*

⁶*Ibid.*, p. 102.

⁷*Ibid.*

⁸Criminal Code 1892, 55-56 Vict., c. 29, s. 205.

⁹Criminal Law Amendment Act, 1968-1969, S.C. 1985, c. 19.

¹⁰*Ibid.*, s. 31.

¹¹Labrosse, The Lottery, p. 154.

¹²S.C. 1973-1974, c. 31.

¹³*Ibid.*, s. 10.

¹⁴The Ontario Lottery Corporation Act, 1974, S.O. 1974, c. 126, s.7 (now cited as R.S.O. 1980, c. 344, s. 7).

¹⁵Ontario, Legislative Assembly, Hansard: Official Report of Debates, 29th Parliament, 4th Session (16 December 1974): 6475.

¹⁶Ontario, Legislative Assembly, Hansard: Official Report of Debates, 29th Parliament, 4th Session (6 February 1975): 7322.

¹⁷Ontario, Legislative Assembly, Hansard: Official Report of Debates, 29th Parliament, 4th Session (4 February 1975): 7261.

¹⁸Ontario, Treasury Board, Supplementary Estimates (A), 1976-77. Vote L27a: Canada, Parliament, Senate, Standing Committee on National Finance, Report on Supplementary Estimates (A), 17 June 1976 in Canada, Parliament, Senate, Debates: Official Report, 30th Parliament, 2st Session (26 May 1976): Appendix B; and Regulations Respecting a National Lottery, SOR/76-364.

¹⁹Standing Committee on National Finance, Report on Supplementary Estimates (A).

²⁰Ontario, Treasury Board, Supplementary Estimates (A), 1976-77. Vote L27a, (e).

²¹Canada, Parliament, Senate, Standing Committee on National Finance, Debates: Official Report, 30th Parliament, 1st Session (1974-76): 33:9.

²²Labrosse, The Lottery, p. 176.

²³Telephone conversation with Duncan Brown, Director, Entertainment Standards Branch, Ontario Ministry of Consumer and Commercial Relations, 6 December 1988.

²⁴Bill C-41, An Act Respecting Loto Canada Inc., 4th Session, 30th Parliament, 27-28 Eliz. II, 1978-1979 (first reading 16 February 1979).

²⁵The agreement is reproduced in Labrosse, The Lottery, p. 179.

²⁶Re Attorney-General of Canada v. Loto-Québec, 9 C.C.C. (3d) 508 at 510.

²⁷S.C. 1980-81-82-83, c. 161.

²⁸*Ibid.*, s. 33.

²⁹*Ibid.*, s. 2.

³⁰*Ibid.*, s. 14 (1)(b).

³¹*Ibid.*, s. 18 (3).

³²Canada, Parliament, House of Commons, Debates—Official Report, 32nd Parliament, 1st Session (27 June 1983), 26816.

³³Labrosse, The Lottery, p. 201.

³⁴S.C. 1985, 52, s. 3.

³⁵Criminal Law Amendment Act, 1968-1969, S.C. 1985, c. 19.

APPENDIX A

Interprovincial Lottery Corporation
British Columbia Lottery Corporation
Western Canada Lottery Foundation
Ontario Lottery Corporation
Loto-Québec
Atlantic Lottery Corporation

INTERPROVINCIAL LOTTERY CORPORATION*

Lottery	Date Introduced	Cessation Date	Classification
Provincial	Oct. 31, 1976	ongoing	passive instant feature
Super Lotto	Feb. 10, 1980	Apr. 1988	passive instant feature
Lotto 6/49	June 12, 1982	ongoing	active mark 6 numbers out of a pool of 49
Special '88	July 1, 1988	ongoing	all provinces except Ontario instant feature
Celebration '89	Jan. 1989	ongoing	Ontario version of Special '88 instant feature

*Charts in Appendix A prepared by Tim Snell, Research Assistant.

Sales totals vary provincially. The Atlantic Provinces, Quebec and Ontario include free tickets in sales totals. Western Canada and British Columbia do not.

Passive Game: participant purchases a pre-numbered ticket.

Active Game: participant plays an active role in selecting ticket numbers.

BRITISH COLUMBIA LOTTERY CORPORATION*

Lottery	Date Introduced	Cessation Date	Classification
Provincial	Oct. 31, 1976	ongoing	passive instant feature
Lotto 6/49	June 12, 1982	ongoing	active mark six numbers out of a pool of 49
Express	April 3, 1985	ongoing	passive instant feature
Lotto-BC	May 3, 1986	ongoing	active select 5 numbers from a field of 40
Break Open	Oct. 3., 1986	ongoing	passive instant feature adult social settings
The Pick	Mar. 27, 1987	ongoing	active 1 to 6 numbers drawn from a field of 40
Special '88	July 1, 1988	ongoing	passive instant feature
Extra	Aug. 24, 1988	ongoing	passive instant feature run as an addition to Lotto 6/49
Punto	duration of 1988 Canadian Football League season		results based on the outcome of Canadian Football League games
Instant games+ (includes a variety of games)	Jan. 1981	ongoing	instant scratch includes a variety of scratch and win games annually each game sold for 3 to 6 month period

* The British Columbia Lottery Corporation was established in 1985.

+ Instant games were introduced under the auspices of the Western Canada Lottery Foundation.

WESTERN CANADA LOTTERY FOUNDATION

Includes Manitoba, Saskatchewan, Alberta,
Northwest Territories and Yukon Territory*

Lottery	Date Introduced	Cessation Date	Classification
Saskatchewan Sweepstake	Jan. 2, 1974	Jan. 25, 1974	passive instant game
The Western	Feb. 1976	Oct. 1976	passive instant feature
Western Express	Apr. 21, 1976	ongoing	passive instant feature
Provincial	Oct. 31, 1976	ongoing	passive instant feature
Instant games (Manitoba only)	Jan. 1981	ongoing	instant scratch includes a variety of scratch and win games which last 2 to 3 months (\$1.00 tickets)
Lotto 6/49	June 12, 1982	ongoing	active mark 6 numbers out of a pool of 49
Lotto West	June 1984	Mar. 25, 1987	active
Lotto 6/36	April 1, 1987	ongoing	active mark 6 numbers out of a pool of 36
Instant	July 24, 1987	ongoing	instant scratch includes a variety of scratch and win games annually \$2.00 per ticket instant game
The Plus	Spring, 1988	ongoing	active - part of Lotto 6/49
Special '88	July 1, 1988	ongoing	passive instant feature

*British Columbia participated in the Foundation until April 1985.

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ONTARIO LOTTERY CORPORATION

Lottery	Date Introduced	Cessation Date	Classification
Wintario	May 15, 1975	ongoing	passive instant feature
Provincial	Oct. 31, 1976	ongoing	passive instant feature
Lottario	Nov. 18, 1978	ongoing	active mark 6 numbers out of a pool of 39
Lotto 6/49	June 12, 1982	ongoing	active mark 6 numbers out of a pool of 49
Instant (encompassing a variety of games)	Mar. 5, 1984	ongoing	instant scratch includes a variety of scratch and win games annually each game sold for 4 to 6 month period
Celebration '89	January 1989	ongoing	Ontario version of Special '88 instant feature

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LOTO-QUÉBEC

Lottery	Date Introduced	Cessation Date	Classification
Mini Lotto	June 5, 1970	ongoing	passive
Provincial	Oct. 31, 1976	ongoing	passive instant feature
Instant (encompassing a variety of games)	June 24, 1977	ongoing	instant scratch includes a variety of scratch and win games annually 6 to 8 games per year
La Quotidienne	Sept. 10, 1979	ongoing	active 4 digit wager
Lotto 6/49	June 12, 1982	ongoing	active mark 6 numbers out of a pool of 49
Select 42	Aug. 22, 1987	ongoing	active select 7 different wagers
Interplus	Oct. 23, 1987	ongoing	passive instant feature
Special '88	July 1, 1988	ongoing	passive instant feature

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ATLANTIC LOTTERY CORPORATION

Name	Date Introduced	Cessation Date	Classification
A-1	Dec. 15, 1976	Mar. 1984	Replaced by A-Plus
Provincial	Oct. 31, 1976	ongoing	passive instant feature
Lotto-50	Sept. 25, 1981	Mar. 2, 1988	passive instant feature
Lotto 6/49	June 12, 1982	ongoing	active mark 6 numbers out of a pool of 49
Instant games (encompassing a variety of games)	Nov. 1, 1983	ongoing	instant scratch includes a variety of instant scratch and win games annually each game approximately 3 to 6 months in duration
A-Plus	Mar. 7, 1984	Mar. 1988	replaced by Auto-Plus
Auto Plus	Mar. 9, 1988	ongoing	passive instant feature
Special '88	July 1, 1988	ongoing	passive instant feature

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APPENDIX B

Criminal Code, s. 207

**PERMITTED LOTTERIES—Terms and conditions of licence—Offence—
Definition of "lottery scheme"—Exception re: pari-mutuel betting.**

207. (1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

- (a) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province;**
- (b) for a charitable or religious organization, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose;**
- (c) for the board of a fair or of an exhibition or an operator of a concession leased by that board, to conduct and manage a lottery scheme in a province where the Lieutenant Governor in Council of the province or such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof has**
 - (i) designated that fair or exhibition as a fair or exhibition where a lottery scheme may be conducted and managed, and**

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- (ii) issued a licence for the conduct and management of a lottery scheme to that board or operator;
 - (d) for any person, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme at a public place of amusement in that province if
 - (i) the amount or value of each prize awarded does not exceed five hundred dollars, and
 - (ii) the money or other valuable consideration paid to secure a chance to win a prize does not exceed two dollars,
 - (e) for the government of a province to agree with the government of another province that lots, cards or tickets in relation to a lottery scheme that is by any of paragraphs (a) to (d) authorized to be conducted and managed in that other province may be sold in the province;
 - (f) for any person, pursuant to a licence issued by the Lieutenant Governor in Council of a province or such other person or authority in the province as may be designated by the Lieutenant Governor in Council thereof, to conduct and manage in the province a lottery scheme that is authorized to be conducted and managed in one or more other provinces where the authority by which the lottery scheme was first authorized to be conducted and managed consents thereto;
 - (g) for any person, for the purpose of a lottery scheme that is lawful in a province under any of paragraphs (a) to (f), to do anything in the province, in accordance with the applicable law or licence, that is required for the conduct, management or operation of the lottery scheme or for the person to participate in the scheme; and
 - (h) for any person to make or print anywhere in Canada or to cause to be made or printed anywhere in Canada anything relating to gaming and betting that is to be used in a place where it is or would, if certain conditions provided by law are met, be lawful to use such a thing, or to send, transmit, mail, ship, deliver or allow to be sent, transmitted, mailed, shipped or delivered or to accept for carriage or transport or convey any such thing where the destination thereof is such a place.
- (2) Subject to this Act, a licence issued by or under the authority of the Lieutenant Governor in Council of a province as described in paragraph (1)(b), (c), (d) or (f) may contain such terms and conditions relating to the conduct, management and operation of or participation in the lottery scheme to which the licence relates as the Lieutenant Governor in Council of that province, the person or authority in the province designated by the Lieutenant Governor in Council thereof or any law enacted by the legislature of that province may prescribe.
- (3) Every one who, for the purposes of a lottery scheme, does anything that is not authorized by or pursuant to a provision of this section
- (a) in the case of the conduct, management or operation of that lottery scheme,

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- (i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding a term not exceeding two years; or
 - (ii) is guilty of an offence punishable on summary conviction; or
 - (b) in the case of participating in that lottery scheme, is guilty of an offence punishable on summary conviction.
- (4) In this section, "lottery scheme" means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than
- (a) a dice game, three-card monte, punch board or coin table;
 - (b) bookmaking, pool selling or the making or recording of bets, including bets made through the agency of a pool or pari-mutuel system, on any race or fight, or on a single sport event or athletic contest; or
 - (c) for the purposes of paragraphs (1)(b) to (f), a game or proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g) that is operated on or through a computer, video device or slot machine, within the meaning of subsection 198(3).
- (5) For greater certainty, nothing in this section shall be construed as authorizing the making or recording of bets on horse-races through the agency of a pari-mutuel system other than in accordance with section 204. R.S., c. C-34, s. 190; 1974-75-76, c. 93, s. 12; R.S.C. 1985, c. 27 (1st Supp.), s. 31, c. 52 (1st Supp.), s. 3.